

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

X-MOBILE TECHNOLOGIES LLC,

Plaintiff,

v.

HTC CORPORATION,

Defendants.

CIVIL ACTION NO. 4:17-cv-699

ORIGINAL COMPLAINT FOR
PATENT INFRINGEMENT

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff X-Mobile Technologies LLC (“X-Mobile”) files this original complaint against HTC Corporation (“Defendant” or “HTC”), alleging, based on its own knowledge as to itself and its own actions and based on information and belief as to all other matters, as follows:

PARTIES

1. X-Mobile is a limited liability company formed under the laws of the State of Texas.
2. On information and belief, Defendant HTC Corporation is a corporation organized and existing under the laws of Taiwan, with its principal place of business at 23 Xinghua Road, Taoyuan City, Taoyuan County 330, Taiwan. On information and belief, HTC does business in Texas, directly or through intermediaries and offers its products and/or services, including those accused herein of infringement, to customers and potential customers located in Texas, including in the Eastern District of Texas.

JURISDICTION AND VENUE

3. This is an action for infringement of United States patents arising under 35 U.S.C. §§ 271, 281, and 284–85, among others. This Court has subject matter jurisdiction of the action under 28 U.S.C. §1331 and §1338(a).

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1400(b). HTC is a foreign corporation and may be sued in this judicial district. Venue is further proper because, on information and belief, HTC has committed acts of infringement in this judicial district, and/or has purposely transacted business involving the accused products in this judicial district.

5. Defendant is subject to this Court’s specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to Defendant’s substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and/or (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this district.

COUNT I

DIRECT INFRINGEMENT OF U.S. PATENT NO. 6,690,351

6. On February 10, 2004, United States Patent No. 6,690,351 (“the ‘351 Patent”) was duly and legally issued by the United States Patent and Trademark Office for an invention entitled “Computer Display Optimizer.”

7. X-Mobile is the owner of the ‘351 Patent, with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the ‘351 Patent against infringers, and to collect damages for all relevant times.

8. Defendant made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products and/or systems including its U11 smartphone and Nexus 9 tablet, families of products (the “accused products”):



(Source: http://www.gsmarena.com/htc_u11-pictures-8630.php)

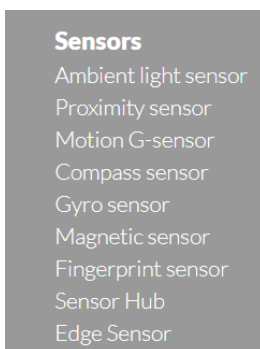


(Source : <http://www.htc.com/us/tablets/nexus-9/>)

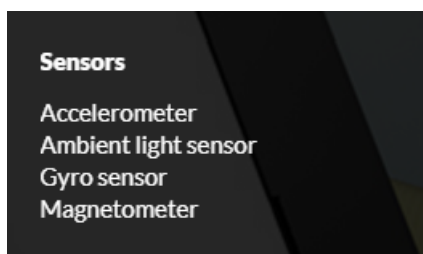
9. By doing so, Defendant has directly infringed (literally and/or under the doctrine of equivalents) at least Claim 1 of the '351 Patent. Defendant's infringement in this regard is ongoing.

10. HTC has infringed the '351 Patent by making, having made, using, importing, providing, supplying, distributing, selling or offering for sale hands free user or operator supported mobile computer systems having hands free, activating means, a processor and a display means, with the processor in electrical connection to the display means.

11. The accused products include at least one sensor for optimizing internal settings in said display when said sensor and said display are in communication:



(Source: <http://www.htc.com/us/smartphones/htc-u11/>)



(Source : <http://www.htc.com/us/tablets/nexus-9/>)

12. The accused products include means in the computer to receive information from the sensor and to transmit it to a data processing means.

13. The accused products include means to translate the data into computer commands to effect control and alteration of the computer system to coincide with any changes resulting from input of the sensor:

Manage your display


Lowering the brightness, letting the display sleep when not in use, and keeping it simple helps save battery power.

- Use automatic brightness which is the default, or manually lower the brightness. See [Screen brightness](#) on page 177.
- Set the screen timeout to a shorter time. See [Setting when to turn off the screen](#) on page 177.
- Don't use a live wallpaper for your Home screen. Animation effects are nice to show off to other people but they drain your battery.

Changing your wallpaper to a plain, black background can also help a little. The less color is displayed, the less battery is used. See [Setting your Home wallpaper](#) on page 62.

(Source : U11 manual downloaded from <http://www.htc.com/us/support/htc-u11/>)

Screen brightness

1. From the Home screen, tap  > **Settings** > **Display & gestures** or **Display, gestures & buttons**.
2. Tap **Brightness level**.
3. With the **Automatic brightness** option selected, drag the slider to set the maximum brightness level. This sets a limit on how bright the screen will be when **Automatic brightness** is selected.
4. To set the brightness manually, clear the **Automatic brightness** option, and then drag the brightness slider to the left to decrease or to the right to increase the screen brightness.

(Source : U11 manual downloaded from <http://www.htc.com/us/support/htc-u11/>)

Glass 3 clad display, though ample brightness helps combat it. We noted wonky auto-brightness that does little to match room lighting but induces visible flicker (hint: disable it in display settings). Somehow the display doesn't wow us like the [Samsung Galaxy Tab S](#) and [iPad Air 2](#) displays, though it's certainly still a very good IPS panel.



(Source : <http://www.mobiletechreview.com/tablets/Nexus-9.htm>)

14. The accused products include that the sensor is enabled to at least measure conditions and optimize internal settings based upon environmental conditions and the type of the display means and reflectivity characteristics of a physical glass and coatings of the display means.

15. HTC has had knowledge of the '351 Patent at least as of the date when it was notified of the filing of this action.

16. X-Mobile has been damaged as a result of the infringing conduct by Defendant alleged above. Thus, Defendant is liable to X-Mobile in an amount that adequately compensates it for such infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

17. X-Mobile and/or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '351 Patent.

COUNT II

DIRECT INFRINGEMENT OF U.S. PATENT NO. 6,262,889

18. On July 17, 2001, United States Patent No. 6,262,889 ("the '889 Patent") was duly and legally issued by the United States Patent and Trademark Office for an invention entitled "Insulated Mobile Computer."

19. X-Mobile is the owner of the '889 Patent, with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the '889 Patent against infringers, and to collect damages for all relevant times.

20. Defendant made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products and/or systems including its U11 smartphone and Nexus 9 tablet, families of products (the “accused products”):



(Source: http://www.gsmarena.com/htc_u11-pictures-8630.php)



(Source : <http://www.htc.com/us/tablets/nexus-9/>)

21. By doing so, Defendant has directly infringed (literally and/or under the doctrine of equivalents) at least Claim 1 of the '889 Patent. Defendant's infringement in this regard is ongoing.

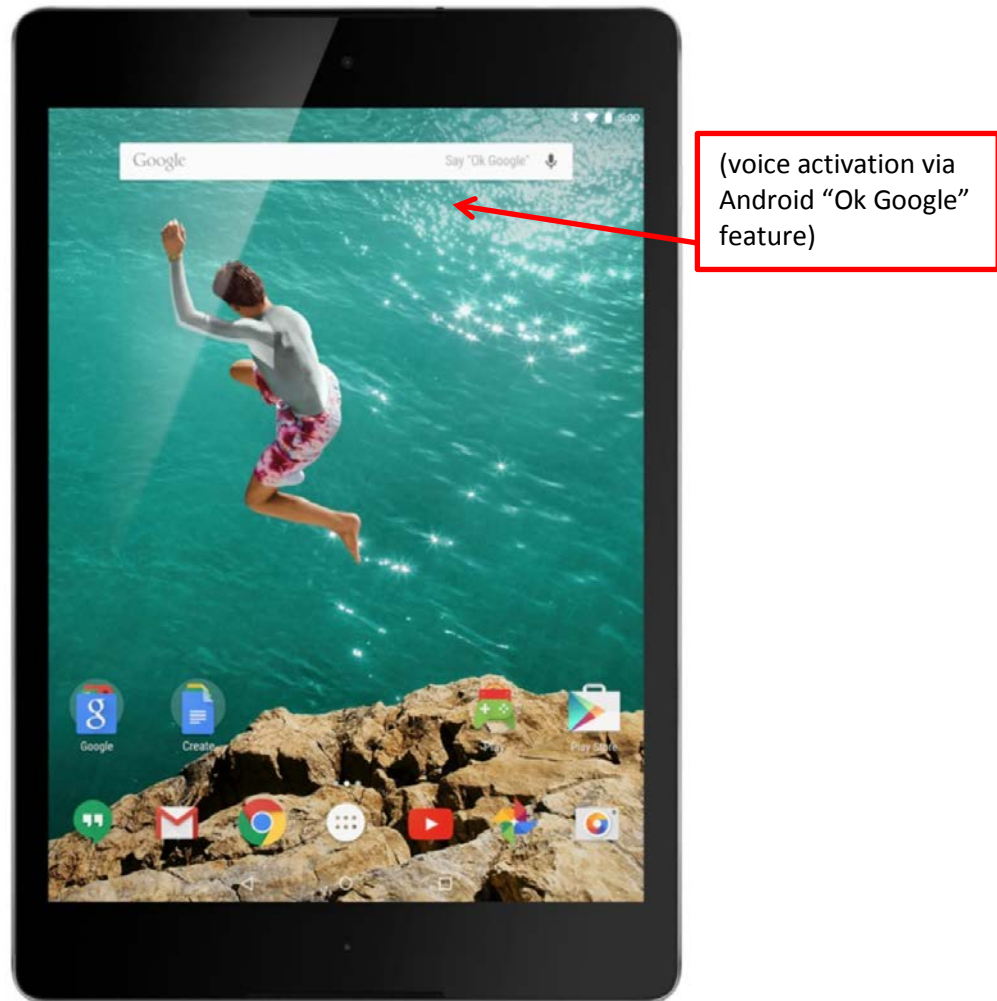
22. HTC has infringed the '889 Patent by making, having made, using, importing, providing, supplying, distributing, selling or offering for sale user supported, hands-free activation computer systems having a computer housing and a display means, the computer housing consisting of all of the components of a conventional computer and having located therein a battery to supply power to the system.

23. The accused products include hands-free activation:

The HTC U11 with HTC Alexa is the world's first smartphone to launch Amazon's Alexa voice service hands-free by simply saying 'Alexa' With Always-On Microphone capability, even when you're not using your phone you can wake up your phone by just asking; "Alexa, what's the weather today?" or "Alexa, turn on my living room lights." Alexa will respond anywhere and anytime—no app to tap, no buttons to push. It's Alexa on the go. HTC Alexa gives you fast, easy access to Alexa's extensive services.

- Shop for birthday presents.
- Create a shopping list.
- Get a Flash Briefing from your favorite news sources.
- Listen to music, audiobooks, and so much more...

(Source: <http://www.htc.com/us/smartphones/htc-u11/>)



(Source : <https://www.amazon.com/Google-Nexus-Tablet-8-9-Inch-White/dp/B00M6UC5TG>)

24. The accused products include the computer housing having a section that will be adjacent the user when in use and supported by the user.

25. The accused products include that the section is constructed of a heat insulating material and forming thereby an internal insulating wall.

26. The accused products include the battery comprising an insulating cover which is located in said housing immediately adjacent the internal insulating wall to provide thereby double insulation for any heat generated by the system within the computer housing at a location closest to the user when in use:



(Source: <https://www.etradesupply.com/blog/replace-htc-u11-cracked-screen-charging-port-battery/>)



(Source: <https://www.etradesupply.com/blog/replace-htc-u11-cracked-screen-charging-port-battery/>)



(Source : <https://www.ifixit.com/Teardown/Nexus+9+Teardown/31425>)



(Source : <https://www.ifixit.com/Teardown/Nexus+9+Teardown/31425>)

27. HTC has had knowledge of the '889 Patent at least as of the date when it was notified of the filing of this action.

28. X-Mobile has been damaged as a result of the infringing conduct by Defendant alleged above. Thus, Defendant is liable to X-Mobile in an amount that adequately compensates it for such infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

29. X-Mobile and/or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '889 Patent.

ADDITIONAL ALLEGATIONS REGARDING INDIRECT INFRINGEMENT

30. Defendant has also indirectly infringed the '351 and '889 Patents by inducing others to directly infringe the '351 and '889 Patents. Defendant has induced the end-users, Defendant's customers, to directly infringe (literally and/or under the doctrine of equivalents) '351 and '889 Patents by using the accused products. Defendant took active steps, directly and/or through contractual relationships with others, with the specific intent to cause them to use the accused products in a manner that infringes one or more claims of the patents-in-suit, including, for example, claim 1 of the '351 Patent and claim 1 of the '889 Patent. Such steps by Defendant included, among other things, advising or directing customers and end-users to use the accused products in an infringing manner; advertising and promoting the use of the accused products in an infringing manner; and/or distributing instructions that guide users to use the accused products in an infringing manner. Defendant performed these steps, which constitute induced infringement, with the knowledge of the '351 and '889 Patents and with the knowledge that the induced acts would constitute infringement. This also induces end-users to use the accused products in a manner that infringes the '351 and '889 Patents. Defendant was and is aware that

the normal and customary use of the accused products by Defendant's customers would infringe the '351 and '889 Patents. Defendant's inducement is ongoing.

31. Defendant has also indirectly infringed by contributing to the infringement of the '351 and '889 Patents. Defendant has contributed to the direct infringement of the '351 and '889 Patents by the end-user of the accused products. The accused products have special features that are specially designed to be used in an infringing way and that have no substantial uses other than ones that infringe the '351 and '889 Patents, including, for example, claim 1 of the '351 Patent, and claim 1 of the '889 Patent. The special features also include automatic brightness settings to be used in a manner that infringes the '351 Patent. The special features also include voice activation features used in a manner that infringes the '889 Patent. The special features constitute a material part of the invention of one or more of the claims of the '351 and '889 Patents and are not staple articles of commerce suitable for substantial non-infringing use. Defendant's contributory infringement is ongoing.

32. Defendant also has knowledge of the '351 and '889 Patents at least as of the date when it was notified of the filing of this action.

33. Defendant's direct and indirect infringement of the '351 and '889 Patents is, has been, and continues to be willful, intentional, deliberate, and/or in conscious disregard of X-Mobile's rights under the patent.

34. X-Mobile has been damaged as a result of the infringing conduct by Defendant alleged above. Thus, Defendant is liable to X-Mobile in an amount that adequately compensates it for such infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

JURY DEMAND

X-Mobile hereby requests a trial by jury on all issues so triable by right.

PRAYER FOR RELIEF

X-Mobile requests that the Court find in its favor and against Defendant, and that the Court grant X-Mobile the following relief:

- a. Judgment that one or more claims of the '351 & '889 Patents have been infringed, either literally and/or under the doctrine of equivalents, by Defendant and/or all others acting in concert therewith;
- b. A permanent injunction enjoining Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert therewith from infringement of the '351 & '889 Patents;
- c. Judgment that Defendant accounts for and pays to X-Mobile all damages to and costs incurred by X-Mobile because of Defendant's infringing activities and other conduct complained of herein;
- d. That X-Mobile be granted pre-judgment and post-judgment interest on the damages caused by Defendant's infringing activities and other conduct complained of herein;
- e. That this Court declare this an exceptional case and award X-Mobile its reasonable attorney's fees and costs in accordance with 35 U.S.C. § 285; and
- f. That X-Mobile be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: October 2, 2017

Respectfully submitted,

/s/ Zachariah S. Harrington
Matthew J. Antonelli
Texas Bar No. 24068432
matt@ahtlawfirm.com

Zachariah S. Harrington
Texas Bar No. 24057886
zac@ahtlawfirm.com

Larry D. Thompson, Jr.
Texas Bar No. 24051428
larry@ahtlawfirm.com

Christopher Ryan Pinckney
Texas Bar No. 24067819
ryan@ahtlawfirm.com

Michael D. Ellis
Texas Bar No. 24081586
michael@ahtlawfirm.com

ANTONELLI, HARRINGTON
& THOMPSON LLP
4306 Yoakum Blvd., Ste. 450
Houston, TX 77006
(713) 581-3000

Attorneys for X-Mobile LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of October 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Zachariah S. Harrington
Zachariah S. Harrington